

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:20-cv-00307-WCM

LIBERTY MUTUAL INSURANCE )  
COMPANY, *as Administrator and Assignee* )  
*of other Developers Surety and Indemnity* )  
Company )

Plaintiff,

v.

FIDELIS VETERAN CONSTRUCTION, INC) )  
JOHN H. LEWIS, and GERRI T. LEWIS )

Defendants.

ORDER

This matter is before the court: 1) on Plaintiff's Motion for Summary Judgment Against the Lewis Defendants (Doc. 20) and 2) *sua sponte* following the filing of a "Stipulation of Dismissal with Prejudice as to Lewis Defendants" (the "Stipulation," Doc. 25).

On October 29, 2020, Plaintiff filed a Complaint against Fidelis Veteran Construction, Inc. ("Fidelis"), John H. Lewis and Gerri T. Lewis (the "Lewis Defendants"), and Chad Brooks and Susan Brooks (the "Brooks Defendants"). Doc. 1.

On February 12, 2021, default was entered by the Clerk as to Fidelis. Doc. 13. A review of the docket indicates that no further action as to Fidelis has occurred.

On February 17, 2021, Plaintiff filed a Notice indicating that it had reached a settlement with the Brooks Defendants. Doc. 14. Plaintiff filed a Voluntary Dismissal as to the Brooks Defendants on March 18, 2021. Doc. 15.

On August 18, 2021, Plaintiff filed their Motion for Summary Judgment Against the Lewis Defendants. Doc. 20. The deadline for the Lewis Defendants to respond was subsequently extended to and including October 15, 2021.

On October 4, 2021, Plaintiff filed a “Notice of Settlement with Lewis Defendants and Request to Withhold Action of Summary-Judgment Motion (the “Notice,” Doc. 23). In the Notice, Plaintiff advised that it had reached a settlement with the Lewis Defendants and that “[u]pon the Lewis Defendants making the initial two payments under the Agreement, the parties presently intend to promptly file a Stipulation of Dismissal with Prejudice.” The Notice also stated that the “Stipulation of Dismissal will terminate all remaining claims in this action.” Doc. 23 at 1.

On November 12, 2021, Plaintiff and the Lewis Defendants filed the Stipulation. Doc. 25.

However, although Plaintiff has advised that settlement with the Lewis Defendants has terminated all remaining claims in this action, it appears that Plaintiff’s claims against Fidelis remain pending.

**IT IS THEREFORE ORDERED THAT:**

1. Plaintiff's Motion for Summary Judgment Against the Lewis Defendants (Doc. 20) is **DENIED AS MOOT**.
2. Plaintiff is **DIRECTED** to file, on or before **November 22, 2021**, either a Notice of Dismissal or a Motion for Entry of Default Judgment as to Defendant Fidelis Veteran Construction, Inc.

Signed: November 15, 2021

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf  
United States Magistrate Judge

